

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
THE BLANC CORPORATION, ASSUMER FOR : )  
SPONBERG'S, INC. )

**Appearances:**

For Appellant: Harold E. Aaron, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel

O \_ P \_ I \_ N \_ I O N

**This** appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of The Blanc Corporation, Assumer for Sponberg's, Inc., to a proposed assessment of **additional** franchise tax in the amount of **\$1,713.45** for the taxable year ended January 31, 1958.

**Sponberg's, Inc.** (hereafter referred to as appellant) was incorporated under the laws of California in 1928 and engaged in the department store business until September 1956, when it sold its assets. Some furniture and equipment, not disposed of, were stored. Appellant **received an interest-bearing** note in the amount of **\$11,893.18** as part payment of, the purchase price.

Appellant **used a** fiscal year ending January 31 as its accounting period, During the fiscal year **ended January 31, 1958,** **appellant** received \$559.51 interest on the 'note and **\$9,891.00** under an insurance policy covering fully depreciated **property** which had been destroyed by fire.

Appellant **continued** to receive interest until the note **was paid** on May 27, **1958.** Appellant dissolved on September 5, 1958.

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On the theory that it was no longer "doing business" within the meaning of section 23101 of the Revenue and Taxation Code, appellant filed a franchise tax return for the taxable year ended January 31, 1958, showing only the minimum tax liability of \$25 then prescribed by section 23153. The Franchise Tax Board determined that appellant was "doing business" during the period in question and that, pursuant to section 23151 of **the Revenue** and Taxation Code, appellant was subject to a tax measured by the net income of **\$43,500.88** which appellant earned in the preceding year,

With certain exceptions not applicable here, section 23151 imposes a ~~tax~~ measured by the net income of the preceding income year ~~upon~~ "every corporation doing business within the limits of this State" for the privilege of exercising its corporate franchise. Section **23101** defines "doing business" as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit,"

Undoubtedly, there need not be extensive activities to constitute "doing business," By its terms, the statute applies if there is but one transaction for profit. Any such transaction, **however**, must be engaged in "actively."

**Mere**, the appellant had sold its assets, ceased conducting its department store business and, during the year in question, merely received interest on the buyer's note and the proceeds from an insurance policy. There is no evidence that in this year it took any action to collect these proceeds. If this constitutes "**actively**" engaging in a transaction it is hard to suggest how a corporation could passively engage in a transaction. Were we to conclude that this was doing business we would, in effect, erase the word "actively" from the statute.

Of those judicial opinions' which have construed the language of section **23101**, there is but one that involves facts approaching the limited activity here presented, In Carson Estate Co, v. McColgan, 21 Cal. 2d 516 [**133 P.2d 636**], a corporation was held to be doing business when it made a purchase of bonds in one year, a sale of bonds in the following year, twelve purchases and sales of stock in the year thereafter and two such transactions in the last year which was considered. From the standpoint of "actively" engaging in a transaction, the act of buying or selling is in marked contrast with merely receiving **proceeds**.

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The Franchise Tax Board relies upon our opinion in Appeal of Sierra Nevada Investment Co., Cal. St. Bd. of Equal., Sept. 23, 1943, P-H State & Local Tax Serv. Cal. **Par. 13033.** There, a corporation was organized to hold the stock of another corporation, In order to relieve its subsidiary from financial difficulties, the parent company borrowed money and purchased at a discount a substantial number of notes on which the subsidiary **was obligated** to various creditors. It was held that the parent was doing business in the year that it borrowed money and purchased the notes and also in the following year when it received and disbursed interest on the notes. That case presented a close question but it is distinguishable from the matter now before us in ~~that~~ the parent corporation there was actively engaged in assisting its subsidiary, disbursing as well as receiving interest in doing so, while appellant here merely received interest and did so in the course of liquidation.

We are not prepared to say that under no circumstances will the receipt of interest constitute doing business. **It** is *our* opinion on the facts of the case before us, however, that the receipt of interest by appellant cannot be construed as "actively engaging in any transaction" and therefore did not constitute doing business during the taxable year.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY **ORDERED**, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of The Blanc Corporation, Assumer for Sponberg's, Inc., to a proposed

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assessment of additional franchise **tax** in the amount of  
**\$1,713.45** for the taxable year ended January 31, 1958, be. and  
the same is hereby reversed.

Done at Sacramento, California, this 18th d a y  
of February, 1964, by the State Board of Equalization.

Paul R. Fisher, Chairman  
John W. Lynch, Member  
Robert H. [unclear], Member  
Robert K. [unclear], Member  
\_\_\_\_\_, Member

ATTEST J. M. [unclear], Secretary